IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 19972 of 2007(C)

PETITIONER:

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1. MANESH M.D.,
   U.P.S.A., M.S.M. H.S.S., KALLINGAPPARAMBA,
   KALPAKANCHERRY P.O., MALAPPURAM DISTRICT.

2. MOHAMMED SUBAIR POTTACHOLA,
   JUNIOR ARABIC TEACHER, M.S.M. H.S.S., -DO- -DO-

3. ABDURAHIMAN,
   KALARIKKAL, JUNIOR ARABIC TEACHER,
   -DO- -DO-

4. ABDUL HAMEED P.,
   U.P.S.A., -DO- -DO-

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

W.P.(C)No.19972 OF 2007

Dated this the 9th day of July, 2007

JUDGMENT

Petitioners had availed of leave without allowance to undergo B.Ed./L.T.T.C. Exts.P1, P3, P5 and P7 are stated to be the orders issued by the Government granting leave to the petitioners.

2. Ext.P1 shows that petitioner no.1 was granted leave with effect from June 6, 2002 to March 31, 2003. Petitioner no.2 was granted leave with effect from July 8, 2003 to March 31, 2004 and petitioner no.3 was granted leave from June 5, 2001 to March 30, 2002. Petitioner no.4, was sanctioned leave from July 8, 2003 to March 31, 2004.

3. Petitioners take exception to the condition incorporated in the orders sanctioning leave to them, to the effect that the period of leave will not count for increment etc. It is contended by the petitioners that the above rider is per se illegal and unsustainable, particularly in view of the judgment of this court in Writ Petition No.26782/06 dated,

February 22, 2006. A copy of the judgment is on record as Ext.P10. It is also brought to my notice that in **Deepika V. State of Kerala (2007 (1) KLT 71)** a similar view has been taken by this court.

4. However, Learned Government Pleader submits that Ext.P10 judgment may not come to the rescue of the petitioners, since the orders sanctioning leave to them were issued after deletion of the third proviso under Rule 33 (b) (2) in part I KSR. But petitioners point out that they had availed of leave and completed the course prior to the amendment though leave was formally sanctioned later. Anyhow, this is a matter to be considered by the Government.

5. In the above facts and circumstances, this writ petition is disposed of with a direction to the respondent to take a decision in the matter in the light of Ext.P10 judgment and other judicial pronouncements. Orders shall be passed as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. Needless to mention that petitioners shall be afforded sufficient

opportunity to be heard before any decision is taken in the matter. Petitioners shall produce a copy of the writ petition along with a certified copy of the judgment before the respondent for compliance.

Writ petition is disposed of as above.

A.K.BASHEER, JUDGE

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